

ROB BONTA  
 Attorney General of California  
 DANIEL A. OLIVAS (SBN 130405)  
 Senior Assistant Attorney General  
 DENNIS L. BECK, JR. (SBN 179492)  
 Acting Senior Assistant Attorney General  
 DEBORAH M. SMITH (SBN 208960)  
 VANESSA MORRISON (SBN 254002)  
 Supervising Deputy Attorneys General  
 ELIZABETH B. RUMSEY (SBN 257908)  
 STACY LAU (SBN 254507)  
 AMAYA RAMSAY-MALONE (SBN 357396)  
 Deputy Attorneys General  
 1515 Clay Street, 20th Floor  
 P.O. Box 70550  
 Oakland, CA 94612-0550  
 Telephone: (510) 879-0860  
 Fax: (510) 622-2270  
 E-mail: Deborah.Smith@doj.ca.gov  
 Vanessa.Morrison@doj.ca.gov  
 Liz.Rumsey@doj.ca.gov  
*Attorneys for Plaintiff*  
*The People of the State of California ex rel. Rob*  
*Bonta Attorney General of California*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

**THE PEOPLE OF THE STATE OF  
 CALIFORNIA, ex rel. ROB BONTA,  
 ATTORNEY GENERAL OF  
 CALIFORNIA,**

Plaintiff,

**v.**

**EXXON MOBIL CORPORATION; AND  
 DOES 1 THROUGH 100, INCLUSIVE,**

Defendants.

3:24-cv-07594-RGS

**DECLARATION OF ELIZABETH  
 RUMSEY IN SUPPORT OF THE  
 PEOPLE OF THE STATE OF  
 CALIFORNIA'S OPPOSITION TO  
 DEFENDANT'S MOTION FOR STAY OF  
 REMAND ORDER**

Date: TBD  
 Time: 1:30 p.m.  
 Dept: Courtroom 3, 17<sup>th</sup> Floor  
 Judge: The Hon. Richard G. Seeborg  
 Trial Date: TBD  
 Action Filed: September 23, 2024

1 I, Elizabeth Rumsey, declare and state as follows:

2 1. I am a Deputy Attorney General in the California Attorney General's Office. I am one  
3 of the attorneys assigned to represent Plaintiff the People of the State of California, ex rel. Rob  
4 Bonta, Attorney General of California, in the above-captioned matter. I am a member of the State  
5 Bar of California and am admitted to appear before this Court. I have personal knowledge of the  
6 facts set forth herein and, if called to testify, I would and could competently testify as set forth  
7 below.

8 2. The People filed this action against ExxonMobil and Does 1 through 100 on  
9 September 23, 2024. ExxonMobil removed the action to federal court on November 1, 2024. The  
10 People moved to remand the action to state court on December 9, 2024, and hearing on that  
11 motion was held on February 13, 2025.

12 3. In advance of the hearing on our remand motion, we contacted counsel for  
13 ExxonMobil, Down Sestito and Matthew Cowan, via email. A true and correct copy of these  
14 email communications is attached hereto as **Exhibit A**. We asked whether, in the event the court  
15 granted the People's motion for remand, ExxonMobil intended to appeal. If ExxonMobil did  
16 intend to appeal, we asked whether ExxonMobil intended to request a stay of the remand motion  
17 at hearing. *See* Exh. A, email of Feb. 11, 2025, 11:57 a.m., from D. Smith to D. Sestito.

18 4. Our primary concern with further delay of the litigation of this matter was (and  
19 remains) that certain third-party evidence may be destroyed or lost. We have communicated to  
20 ExxonMobil that there are several witnesses with potentially valuable knowledge of important  
21 facts who are elderly or ill, who we intend to depose. We have further communicated that we are  
22 concerned that these individuals may only be available for deposition for a finite period of time, if  
23 they are still available at all. Further, it has come to our attention that a number of sources of  
24 potentially valuable information, including social media and internet search platforms, are likely  
25 subject to the Federal Stored Communications Act. *See* 18 U.S.C. § 2701, *et seq.* Section 2703 of  
26 this Act appears to limit the time that social media entities can be required to preserve data to 180  
27 days. 18 U.S.C. § 2703.

1           5. In addition to the prospect of delay pending appeal of the remand order, it is also our  
2 understanding that, should the case be remanded, ExxonMobil intends to file several motions  
3 challenging jurisdiction as well as the sufficiency of the Complaint.

4           6. In light of our concerns regarding potential loss of evidence, and the prospect of  
5 significant delay, we communicated to counsel (both in emails and ongoing phone discussions)  
6 that we would likely oppose any stay, but that we wished to explore whether the parties could  
7 come to a mutually agreeable solution regarding next steps in the litigation, that would, at the  
8 very least, allow us to pursue certain third-party discovery. *See* Exh. A, email of Feb. 11, 2025,  
9 11:57 a.m., from D. Smith to D. Sestito. To allow additional time to continue these discussions  
10 after hearing, we agreed to jointly request a short administrative stay (**30 days**) of the remand  
11 order, should the court decide to issue one. *See id.*, email of Feb. 13, 2025, 12:24 p.m., from D.  
12 Smith to D. Sestito.

13           7. The Court imposed an administrative stay of 42 days that expires on April 7, 2025.  
14 This is a longer stay than we anticipated.

15           8. Attached hereto as **Exhibit B** is a true and correct copy of a transcript of the February  
16 13, 2025 proceedings before this court, on the People's remand motion  
17

18           I declare that the foregoing is true and correct under penalty of perjury under the laws of the  
19 United States. Executed March 25, 2025, at San Francisco, California.  
20

21  
22 

23 Elizabeth Rumsey  
24  
25  
26  
27  
28

## EXHIBIT A

**From:** [Deborah Smith](#)  
**To:** [Sestito, Dawn](#); [Cowan, Matthew R.](#)  
**Cc:** [Vanessa Morrison](#); [Stacy J. Lau](#); [Liz Rumsey](#); [Amaya RamsayMalone](#); [Hallie Kutak](#); [Justin Lee](#)  
**Subject:** RE: Meeting to discuss procedural issues  
**Date:** Thursday, February 13, 2025 12:23:37 PM

---

Dawn,

We can agree with 30 days. I assume that when you say that timeframe would, in part, “provide time to brief a motion to stay” that we would also meet and confer regarding a briefing schedule for such a motion.

Thank you,

Debbie

---

**From:** Sestito, Dawn <dsestito@omm.com>  
**Sent:** Thursday, February 13, 2025 11:54 AM  
**To:** Deborah Smith <Deborah.Smith@doj.ca.gov>; Cowan, Matthew R. <mcowan@omm.com>  
**Cc:** Vanessa Morrison <Vanessa.Morrison@doj.ca.gov>; Stacy J. Lau <Stacy.Lau@doj.ca.gov>; Liz Rumsey <Liz.Rumsey@doj.ca.gov>; Amaya RamsayMalone <Amaya.RamsayMalone@doj.ca.gov>; Hallie Kutak <Hallie.Kutak@doj.ca.gov>; Justin Lee <Justin.Lee@doj.ca.gov>  
**Subject:** RE: Meeting to discuss procedural issues

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Debbie – thank you for the call yesterday. As I noted, we are always open to discussion about management of the case. We discussed agreement to an administrative stay of the remand in the event the court grants the motion to remand so that the parties can at that time discuss next steps (and to provide time to brief a motion to stay if ExxonMobil decides to appeal and believes that a stay is warranted). We propose a 30-day administrative stay. Let me know your thoughts on that. And, of course, we'll also confer about next steps if the motion to remand is denied.

Best,  
Dawn

**O'Melveny**

**Dawn Sestito**  
[dsestito@omm.com](mailto:dsestito@omm.com)  
O: +1-213-430-6352

O'Melveny & Myers  
LLP  
400 South Hope  
Street, 18<sup>th</sup> Floor  
Los Angeles, CA  
90071

[Website](#) | [LinkedIn](#) |  
[Twitter](#)

*This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.*

---

**From:** Deborah Smith <[Deborah.Smith@doj.ca.gov](mailto:Deborah.Smith@doj.ca.gov)>  
**Sent:** Tuesday, February 11, 2025 3:16 PM  
**To:** Sestito, Dawn <[dsestito@omm.com](mailto:dsestito@omm.com)>; Cowan, Matthew R. <[mcowan@omm.com](mailto:mcowan@omm.com)>  
**Cc:** Vanessa Morrison <[Vanessa.Morrison@doj.ca.gov](mailto:Vanessa.Morrison@doj.ca.gov)>; Stacy J. Lau <[Stacy.Lau@doj.ca.gov](mailto:Stacy.Lau@doj.ca.gov)>; Liz Rumsey <[Liz.Rumsey@doj.ca.gov](mailto:Liz.Rumsey@doj.ca.gov)>; Amaya RamsayMalone <[Amaya.RamsayMalone@doj.ca.gov](mailto:Amaya.RamsayMalone@doj.ca.gov)>; Hallie Kutak <[Hallie.Kutak@doj.ca.gov](mailto:Hallie.Kutak@doj.ca.gov)>; Justin Lee <[Justin.Lee@doj.ca.gov](mailto:Justin.Lee@doj.ca.gov)>  
**Subject:** RE: Meeting to discuss procedural issues

Dawn,

We are available tomorrow at 1:30. Would you like to send a Zoom link? You can just include me, Vanessa, Stacy, and Liz from the above cc's.

Thank you,

Debbie

---

**From:** Sestito, Dawn <[dsestito@omm.com](mailto:dsestito@omm.com)>  
**Sent:** Tuesday, February 11, 2025 2:55 PM  
**To:** Deborah Smith <[Deborah.Smith@doj.ca.gov](mailto:Deborah.Smith@doj.ca.gov)>; Cowan, Matthew R. <[mcowan@omm.com](mailto:mcowan@omm.com)>  
**Cc:** Vanessa Morrison <[Vanessa.Morrison@doj.ca.gov](mailto:Vanessa.Morrison@doj.ca.gov)>; Stacy J. Lau <[Stacy.Lau@doj.ca.gov](mailto:Stacy.Lau@doj.ca.gov)>; Liz Rumsey <[Liz.Rumsey@doj.ca.gov](mailto:Liz.Rumsey@doj.ca.gov)>; Amaya RamsayMalone <[Amaya.RamsayMalone@doj.ca.gov](mailto:Amaya.RamsayMalone@doj.ca.gov)>; Hallie Kutak <[Hallie.Kutak@doj.ca.gov](mailto:Hallie.Kutak@doj.ca.gov)>; Justin Lee <[Justin.Lee@doj.ca.gov](mailto:Justin.Lee@doj.ca.gov)>  
**Subject:** RE: Meeting to discuss procedural issues

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Debbie,

Of course – happy to discuss. I can talk later this afternoon (maybe 4:30 or so) or tomorrow afternoon (maybe 1:30/2 or later). Let me know what is best for you.

Best,  
Dawn

**O'Melveny**

**Dawn Sestito**  
[dsestito@omm.com](mailto:dsestito@omm.com)

O: +1-213-430-6352

O'Melveny & Myers  
LLP  
400 South Hope  
Street, 18<sup>th</sup> Floor  
Los Angeles, CA  
90071  
[Website](#) | [LinkedIn](#) |  
[Twitter](#)

*This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.*

---

**From:** Deborah Smith <[Deborah.Smith@doj.ca.gov](mailto:Deborah.Smith@doj.ca.gov)>

**Sent:** Tuesday, February 11, 2025 11:57 AM

**To:** Sestito, Dawn <[dsestito@omm.com](mailto:dsestito@omm.com)>; Cowan, Matthew R. <[mcowan@omm.com](mailto:mcowan@omm.com)>

**Cc:** Vanessa Morrison <[Vanessa.Morrison@doj.ca.gov](mailto:Vanessa.Morrison@doj.ca.gov)>; Stacy J. Lau <[Stacy.Lau@doj.ca.gov](mailto:Stacy.Lau@doj.ca.gov)>; Liz Rumsey <[Liz.Rumsey@doj.ca.gov](mailto:Liz.Rumsey@doj.ca.gov)>; Amaya RamsayMalone <[Amaya.RamsayMalone@doj.ca.gov](mailto:Amaya.RamsayMalone@doj.ca.gov)>; Hallie Kutak <[Hallie.Kutak@doj.ca.gov](mailto:Hallie.Kutak@doj.ca.gov)>; Justin Lee <[Justin.Lee@doj.ca.gov](mailto:Justin.Lee@doj.ca.gov)>

**Subject:** Meeting to discuss procedural issues

Dawn,

We would like to schedule a time prior to the motion to remand hearing on Thursday to discuss some procedural issues. For example, we would like to discuss whether, in the event that the state prevails on the motion to remand, ExxonMobil intends to appeal and request a stay at the hearing on Thursday. If so, the state would likely oppose a request for stay, but we would like to explore whether we can reach some kind of agreement instead.

We would also like to discuss the possibility of entering into a comprehensive stipulation regarding motions and discovery following a potential remand. We understand, as stated in the joint stipulation to extend time filed on November 6, 2024, that ExxonMobil intends to file an anti-SLAPP motion if this case is remanded to state court.

If you are amenable to meeting, please let us know some times that would work for you.

Thank you,

Debbie

**CONFIDENTIALITY NOTICE:** This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the

communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.



## EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
RICHARD SEEBORG, CHIEF DISTRICT JUDGE

Sierra Club, Inc., et al,	)	
	)	
Plaintiffs,	)	
vs.	)	3:24-cv-07288
	)	
Exxon Mobil Corporation, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF MOTION TO REMAND

THURSDAY, FEBRUARY 13, 2025

2:31 P.M.

SAN FRANCISCO, CALIFORNIA

---

Teresa B. Johnson, CVR-M-CM, RVR, RVR-M  
U.S. District Court Reporter  
250 East North Street, Room 3401  
Greenville, SC 29601  
California CSR License# 14765

Reporting remotely by video teleconference

APPEARANCES OF COUNSEL:

For Plaintiffs:

Cotchett, Pitre & McCarthy LLP  
BY: GRACE Y. PARK, ESQUIRE  
TYSON C. REDENBARGER, ESQUIRE  
840, Malcolm Road  
Burlingame, CA 94010  
Appearing in person

For Defendant:

OMelveny and Myers LLP  
BY: DAWN SESTITO  
JASON ZARROW  
400 South Hope Street  
LOS ANGELES, CA 90071  
Appearing in person

For Plaintiff The People of the State of California:

California Office of the Attorney General  
BY: HALLIE E. KUTAK  
300 S. Spring St 1700  
Los Angeles, CA 90013  
Appearing in person

P R O C E E D I N G S

(Proceedings commence on Thursday, the 13th  
day of February 2025, at 2:31 p.m.)

THE COURTROOM DEPUTY: Calling Case  
24-cv-7288, Sierra Club versus ExxonMobil Corporation,  
and related case 24-cv-7594, The People of the State of  
California versus ExxonMobil Corporation.

Counsel, please come forward and state your  
appearances.

MS. PARK: Grace Park of Cotchett, Pitre &  
McCarthy LLP representing Sierra Club, Surfrider  
Foundation, Heal the Bay, and Baykeeper.

THE COURT: Good afternoon.

MS. KUTAK: Good afternoon, Your Honor. My  
name is Hallie Kutak from the California Department of  
Justice here on behalf of the People of the State of  
California.

THE COURT: Good afternoon.

THE COURT REPORTER: Excuse me.

THE COURTROOM DEPUTY: Oh, she's having  
issues.

THE COURT REPORTER: Excuse me. This is the  
court reporter. I apologize.

THE COURTROOM DEPUTY: Teresa, what's the  
matter?

1 THE COURT REPORTER: They sound very muffled.

2 THE COURTROOM DEPUTY: I can't hear you.

3 THE COURT REPORTER: They sound very muffled  
4 at the microphone. They're too close to the microphone.

5 THE COURT: Our court reporter is virtual.

6 THE COURTROOM DEPUTY: Can you hear the Judge?  
7 Okay.

8 I think she doesn't want you too close to the  
9 mic maybe?

10 MS. SESTITO: Okay. Is this okay?

11 THE COURT: Yes. Go ahead.

12 MS. SESTITO: Is this okay?

13 THE COURT: Yes.

14 MS. SESTITO: Okay.

15 THE COURT: Go ahead.

16 MS. SESTITO: Good afternoon. Dawn Sestito of  
17 OMelveny and Myers. I'm here for Defendant ExxonMobil  
18 Corporation. With me at counsel table is Jason Zarrow.

19 THE COURT: Very good. Good afternoon.

20 So this matter is on for motions by the  
21 plaintiff to remand both the case brought by the State  
22 of California and by various nonprofit groups. I'll  
23 offer you some tentative views so that you can focus  
24 your arguments for me.

25 With respect to the California case, I don't

1 think there is any real -- really realistic basis to  
2 argue either federal enclave or federal officer  
3 jurisdiction that would be applicable here, there being  
4 no independent basis for federal jurisdiction on savings  
5 to suitors clause, Constitution clause. I even don't  
6 think there's any maritime jurisdiction is properly  
7 involved here.

8 Even were we just to look at this from the  
9 maritime -- the jurisdiction perspective, I -- I also  
10 don't think it's -- that would be supported standing  
11 alone, as I really don't think the (indiscernible) in  
12 the -- in the complaint bear a substantial relationship  
13 to traditional maritime activity.

14 Although I -- I think that the California  
15 state case is subject to remand, that does move us with  
16 what to do with the nonprofit entities case, which it  
17 does appear there is complete diversity. So that throws  
18 us into the realm of applicability under section -- or  
19 to a lesser extent the Colorado River Doc. So I -- I  
20 do want to hear about that and see where we go -- go  
21 from here.

22 So that being the -- my tentative view, I -- I  
23 will not certainly preclude the defendants from arguing  
24 about the California state case, but I -- I really don't  
25 think that the -- the bases for fighting the remand of

1 that case are -- are very viable. And I have to say,  
2 of -- of the arguments you made, the federal officer  
3 argument, I think, verges on the absurd, quite frankly.

4 All right. So that said, because you're going  
5 to be arguing both, why don't I have the defense come  
6 up? As I say, I won't preclude discussion of the  
7 California state case, but keep in mind I have a pretty  
8 strong tentative on that. So I really want to spend  
9 most of our time focused on the nonprofits' case, and  
10 what -- what to do it, frankly.

11 MS. SESTITO: Okay. Understood, Your Honor.  
12 I'll start by saying if -- if Your Honor (indiscernible)  
13 the attorney general case, there's absolutely nothing  
14 unusual about having cases that are related and parallel  
15 that proceed in state and federal court. And so I want  
16 to -- want to address that thoroughly with *Younger*  
17 abstention issues. I do want to say a couple of things  
18 quickly, though, about the state case, keeping in mind  
19 your comments.

20 So our -- our remand motion was focused on the  
21 allegations of the complaint. And I want to start with  
22 maritime. Your Honor mentioned savings to suitors.  
23 That was not a ground that was raised in the motion to  
24 remand. It has -- it is believable and -- and we  
25 believe has been waived. And if you give me just a

1 moment, I will give you -- there's Ninth  
2 Circuit authority --

3 THE COURT: Did you argue the waiver point in  
4 your papers?

5 MS. SESTITO: No, because they had not waived  
6 it. So there was no basis for us to address the savings  
7 to suitor clause. So it was raised for the first --

8 THE COURT: Is it my obligation to -- it's  
9 jurisdiction question? I mean, don't I have to make a  
10 determination on whether or not there's proper  
11 jurisdiction?

12 MS. SESTITO: Absolutely. But the savings to  
13 suitor clause is not -- doesn't divest the court of  
14 jurisdiction. It's waivable. And the case is *Morris*  
15 *versus Princess Cruises*. The site is 236 F.3d 1061,  
16 1069. That's a Ninth Circuit case from 2001. And it  
17 says that a "state plaintiff may waive the improper  
18 removal under a savings to suitor clause claim." And  
19 the idea is that the plaintiff has the option in a  
20 maritime case of filing in state court or in federal  
21 court.

22 The savings to suitors clause typically would  
23 bar removal, but it's waivable. And here the plaintiffs  
24 waived it in two ways, actually. So one is that they  
25 didn't raise it in their opening motion to remand. But



1 as a procedural defect, those typically have to be  
2 raised within 30 days of removal. And in this case,  
3 that also was not done. It was not raised within 30  
4 days of removal. So the savings to suitor clause does  
5 not divest the Court of jurisdictional under *Morris*.  
6 It's, instead, a waivable procedural defect in the  
7 removal.

8 THE COURT: Assuming for a moment that waiver  
9 isn't applicable for whatever reason, if they -- if you  
10 didn't have waiver as your argument, why would -- why  
11 would you be able to fight the remand with respect to  
12 the issue of the savings to suitor clause?

13 MS. SESTITO: That was addressed. There's two  
14 issues that were reserved in the *San Mateo* case, Your  
15 Honor, by the Ninth Circuit --

16 THE COURT: Well, I'm not sure they were  
17 reserved, but okay.

18 MS. SESTITO: But they were left open.

19 And if this argument had been raised in the  
20 motion to remand, we would have briefed them in our  
21 opposition. It wasn't, so we didn't have that  
22 opportunity. So I can talk about it. I would say that  
23 if Your Honor is going to rely on the savings to  
24 suitors, we think it would be appropriate to have  
25 briefing on the issue of both waiver and whether or not

1 these other kind of key issues that were reserved or at  
2 least identified by the Ninth Circuit in the *San Mateo*  
3 case.

4 THE COURT: Okay. Well, let's -- let's put  
5 that one aside. And let's -- let's go back first.  
6 Let's start with maritime jurisdiction standing alone.

7 MS. SESTITO: Sure.

8 THE COURT: Okay.

9 MS. SESTITO: So location. Did the tort occur  
10 in navigable water? I want to be clear what navigable  
11 water is. That's waters that form a highway or ways of  
12 transportation in which commerce can be conducted with  
13 other states or countries. So that includes a lot of  
14 ground in the state of California within the state's  
15 geographical boundaries. We identified cases, the  
16 Sacramento River, the --

17 THE COURT: It is a process of if you can find  
18 something in there, some small enclave in the state, all  
19 you say is, "There must be some enclaves in the state,"  
20 that's -- that's not enough to say this is maritime  
21 jurisdiction.

22 MS. SESTITO: Well, maritime is distinct, Your  
23 Honor, from the enclave issue. So maritime -- the  
24 navigable waters, I -- I would submit that their  
25 complaint is primarily involving navigable waters, and

1 that's because their complaint focuses a lot on the  
2 coastline and beaches. It's undisputed that the ocean,  
3 including the ocean that abuts the coastline, is  
4 navigable waters. And so all of that water along an  
5 entire coastline --

6 THE COURT: I think that's a complete stretch.  
7 I really do. This isn't a maritime case. We have a lot  
8 of maritime cases here, admiralty cases. This isn't  
9 a -- that's a complete stretch, I think.

10 MS. SESTITO: Well, I think looking at the  
11 elements, the tort arises on the -- on navigable waters.  
12 The second element is whether there's impact -- or  
13 potentially disruptive impact of the maritime commerce.

14 THE COURT: You know, I admire you and the  
15 creativity of your arguments, but -- and I -- I respect  
16 your right to make that argument. But I -- really,  
17 that's all flushed out in the papers. And I -- I'm  
18 going there. So I don't want to impose on your time  
19 needlessly, so let's move on to a different area.

20 MS. SESTITO: All right.

21 THE COURT: The federal enclave issue --

22 MS. SESTITO: Uh-huh.

23 THE COURT: -- and again, on the federal  
24 officer issue, you've submitted a lot of paper to me. I  
25 don't buy it, so let's not spend any time on that.

1 MS. SESTITO: Okay.

2 THE COURT: But the -- the -- you know,  
3 (indiscernible) to Exxon doing double production isn't  
4 gonna fly. So what -- why don't you talk to me a little  
5 about the federal enclave jurisdiction?

6 MS. SESTITO: Sure. So federal enclaves are  
7 distinct from maritime. And they have to do with  
8 federal -- there are certain definitions for federal  
9 enclaves and whether the injury occurs or the conduct  
10 issue occurs on that federal enclave. And here, I don't  
11 think there's any dispute that there is at least some  
12 injury that has occurred on federal enclave.

13 THE COURT: Is that all you need, though?  
14 Some -- you'll find -- in state of California, you'll  
15 find some piece of federal enclave. And you say, all we  
16 need to do is find just some, you know, piece of the  
17 Presidio. And therefore, then we're -- you know, we got  
18 federal enclave jurisdiction.

19 MS. SESTITO: Well, the issue, Your Honor, is  
20 that if the injury occurs on the federal enclave, it's  
21 actually governed by federal law. And so that what --  
22 that's what provides the basis for removal. And so I do  
23 think that if there is an injury that occurs on a  
24 federal enclave that that provides removal jurisdiction.

25 There are cases that specifically say that it

1 doesn't have to be, you know, the (indiscernible)  
2 argument, like the *Bell* case, which involved asbestos.  
3 They didn't find that all of the asbestos exposure  
4 occurred on federal enclaves. They found that it was on  
5 some of the federal enclave -- that -- that some of the  
6 (indiscernible) at issue were federal enclaves. So  
7 there's not a requirement that the entirety of the  
8 location has to be a federal enclave.

9           And in this case, remember, the effect of what  
10 is alleged in the case --

11           THE COURT: Have they disclaimed it, federal  
12 enclave?

13           MS. SESTITO: Well, I mean, they disclaim  
14 federal -- looking at the specific footnote, they  
15 disclaim on federal lands.

16           THE COURT: Right. They're the masters of  
17 their complaint, and they are disclaiming. So you're  
18 saying, "Oh. Well, they are going to say that they're  
19 -- that they're disclaiming any federal enclave because  
20 we can find some in the state of California that doesn't  
21 work for them." And I don't see why they can't  
22 disclaim.

23           MS. SESTITO: But they went on then to include  
24 allegations that, I think, do include federal enclaves.  
25 And there's extensive allegations about conduct and

1 impacts and injuries across the entirety of the state or  
2 across the entirety of the globe.

3 THE COURT: And then they -- and to the extent  
4 they've done that, they've then carved out any federal  
5 enclave. So you know, what more could they say?

6 MS. SESTITO: Well, I -- I think that -- I  
7 guess what I would say is it's not clear to us when they  
8 are making specific allegations about federal enclaves  
9 in the context of the complaint that they're simply not  
10 going to be part of the relief that they are seeking,  
11 part of the injury that they're seeking. And when their  
12 allegation is when the complaint --

13 THE COURT: You -- you would perfectly  
14 entitled to say, "Look, they disclaimed it." If they --  
15 if they try to pull a stunt like that on you, then you  
16 can say, "Well, we've got this disclaimer, so they  
17 can't -- they can't recover for any injury on federal  
18 property."

19 MS. SESTITO: And as an example, Your Honor,  
20 in paragraph 360, they specifically referenced the  
21 Monterrey Bay National Marine Sanctuary, which they seem  
22 to agree is a federal enclave. It's not clear, though,  
23 that they're carve out of federal (indiscernible)  
24 applies to a marine sanctuary, which is waters, but  
25 they're the ones who allege that specific harm in

1 paragraph 360.

2 They identify in paragraph 100 and -- or they  
3 say that there's 105 water bodies within the state that  
4 have been impacted. And so in light of those  
5 allegations, it -- I -- I don't think it's as clear that  
6 this footnote can just disclaim it, that they can bring  
7 a claim that is asserting injury essentially across the  
8 entirety of the state. They can hold a single company  
9 responsible for all of global plastic pollution.

10 THE COURT: That doesn't mean they'll prevail  
11 on the claim. I mean, I'm not -- this is -- we're just  
12 talking about the right to get the jurisdiction  
13 question.

14 MS. SESTITO: Sure.

15 THE COURT: Your argument would be much  
16 stronger if we were -- if they were bringing a claim to  
17 cover a geographic area that is dominated by federal  
18 enclaves. And -- and you say, well, there's no --  
19 there's no way they could perceive their -- their whole  
20 theory here is really going after things that even with  
21 a disclaimer, it doesn't make any sense because there's  
22 so much federal enclave territory. We're talking to the  
23 state of California. It's got a lot of nonfederal  
24 enclaves.

25 So their complaint isn't -- isn't, you know,

1 subject to a problem right out of the box because of the  
2 nature of the area that they're purporting to cover. So  
3 that's why I don't see why the disclaimer doesn't  
4 provide you the protection that you need.

5 MS. SESTITO: Yeah. I mean, I think our goal  
6 is that there's -- that the allegations are so broad in  
7 terms of the conduct within the state of California and  
8 the lands that are covered, but also a specific  
9 reference to the Monterrey National Marine Sanctuary,  
10 which is not -- it's not clear to me, for example, that  
11 that footnote -- the footnote doesn't address enclaves;  
12 it addresses federal land -- that those things are  
13 necessarily co-extensive, and it applies to that  
14 particular marine sanctuary. So then there's a specific  
15 allegation about it.

16 It seems like that's part of what they're  
17 suing for. And they're asking -- just to be clear,  
18 right, there's a public nuisance claim. There's a water  
19 pollution claim. They're asking -- it appears that they  
20 will be asking for ExxonMobil to go in and actually  
21 remove plastic pollution from across the state, anything  
22 within the geographic boundaries of the state of  
23 California.

24 THE COURT: And I presume you would say if it  
25 got to that point, well, marine (indiscernible) is



1 federal enclave.

2 MS. SESTITO: Well, I mean, as I said, it's  
3 not clear that there's bar disclaimers (indiscernible)  
4 federal enclave as opposed to federal land.

5 THE COURT: Let me ask the -- your counterpart  
6 from the state on the waiver issue, and then perhaps  
7 also if you want to respond to some of the other points.  
8 But in particular, what's your response on the saving --  
9 savings to suitors clause waiver issue?

10 MS. KUTAK: Your Honor, I have not read the  
11 case that ExxonMobil offered the citation --

12 THE COURT: The first case that they  
13 mentioned?

14 MS. KUTAK: Yes.

15 But in responding to ExxonMobil's claim in  
16 their opposition that jurisdiction on any one of those  
17 bases would entitle them to supplemental jurisdiction on  
18 a remand, and that's simply not true for maritime  
19 jurisdiction.

20 And even so, I think --

21 THE COURT: So that -- you're saying they just  
22 don't have the basis to -- to base their claim on  
23 maritime jurisdiction. That's standing alone, right?

24 MS. KUTAK: Right.

25 THE COURT: But you're also making the

1 argument that they need an underlying alternative  
2 federal basis for jurisdiction because of the savings to  
3 suitor clause.

4 MS. KUTAK: Correct.

5 THE COURT: And they're saying to me, well,  
6 they waived that argument. And then they cite this  
7 *Morris* case. So that's the issue I was looking for you  
8 to respond to.

9 MS. KUTAK: I see. The savings to suitors  
10 clause is found on separate basis of jurisdiction that  
11 we could waive by not opposing. We were responding to  
12 ExxonMobil's claim in their papers that any ground for  
13 jurisdiction that they raised would (indiscernible) to  
14 supplemental jurisdiction of the rest of claims. And --  
15 and that's not true for maritime jurisdiction. Right?  
16 If they brought -- if maritime jurisdiction were the  
17 only ground that they could show applied, they still  
18 would have to stay in state court. They would not get  
19 supplemental jurisdiction over the other claims.

20 And that aside, I think under the maritime  
21 jurisdiction, I don't think this case is a maritime  
22 case. It certainly does not have maritime flavor.  
23 ExxonMobil has not explained by the activity giving rise  
24 to the complaint -- mainly the deception on recycling  
25 has any relationship -- -- more or less a substantial

1 relationship to traditional maritime activities such  
2 that it would make sense for the court to  
3 apply admiralty law to this case.

4 THE COURT: Okay. Back to -- back to you.

5 MS. SESTITO: Yes, I just -- I know you don't  
6 want to hear about federal officer. I just want to make  
7 one point for the record, which is just, again, that the  
8 scope of the relief that the state is seeking is  
9 breathtaking, in terms of seeking a cleanup of plastic  
10 by a single company across -- within the entire  
11 geographical boundaries --

12 THE COURT: Oh, I --

13 MS. SESTITO: -- of the state --

14 THE COURT: I --

15 MS. SESTITO: -- of California.

16 THE COURT: I understand that's your position,  
17 but is that -- is this the day to that argue that? I  
18 mean, we're really talking about where -- in what court  
19 these claims go forward, not whether or not, you know,  
20 these -- just what you said, these claims are way out  
21 there or not. I mean, that's for another day.

22 MS. SESTITO: Yes. I understand that. The  
23 point I'm trying to make is that given the breadth and  
24 scope and their claim to a lot of conduct that's many  
25 decades old, they're claiming that plastics last for a

1 very long time and may take decades or hundreds of years  
2 for them to break down. That is why we tied in the  
3 federal officer. Because if there is plastic or plastic  
4 products that were made at the direction of federal  
5 officer, and we're now going to be -- they're seeking to  
6 hold us responsible --

7 THE COURT: But their -- they're so much more  
8 specific about microplastics, but it's not about rubber.  
9 And in your argument -- I mean, I don't particularly  
10 want to get too deeply into it --

11 MS. SESTITO: Sure.

12 THE COURT: -- because frankly, I think that  
13 one pushes the envelope a bit. The fact that Exxon was  
14 involved in rubber production during World War II is not  
15 a basis to say you've got federal officer jurisdiction  
16 now in a case that involves microplastic pollution quite  
17 specifically alleged against your client. You -- it  
18 just -- it doesn't -- it's not -- it's not your  
19 strongest argument. Let me put it that way.

20 MS. SESTITO: Understood, Your Honor. Well,  
21 we'll make those arguments later in terms of the scope  
22 of abatement, yes.

23 THE COURT: All right. So I think now let's  
24 shift to -- assuming for a moment -- and I will go back  
25 and look at this waiver point in *Morris* case. And I may

1 ask for briefing as you suggest. Let me take a look at  
2 that. But for -- for purposes of our discussion today,  
3 let -- let us assume we are in a world where the  
4 California -- State of California case has gone back to  
5 state court, and now we have the nonprofits case. And  
6 the argument that I'm hearing from the nonprofit  
7 plaintiffs is you should apply *Younger* abstention, or  
8 alternatively, you should -- if you don't think *Younger*  
9 abstention works here, then go with *Colorado River* Doc.

10 Okay. So let's talk about that. So seeing  
11 that you're up here --

12 MS. KUTAK: Your Honor --

13 THE COURT: Yes.

14 MS. KUTAK: -- may I be heard on part of the  
15 maritime jurisdiction?

16 THE COURT: Yes. Go ahead.

17 MS. KUTAK: Thank you.

18 I -- I understand that the court is going to  
19 consider additional briefing. I think that briefing --

20 THE COURT: Well, I don't know yet. Let me go  
21 back and look, and I'll tell you if I want additional  
22 briefing.

23 MS. KUTAK: Of course. I think that  
24 additional briefing would only be helpful proving  
25 maritime jurisdiction applied here. Otherwise, it would

1 be this exercise -- we argued maritime jurisdiction on  
2 the merits. ExxonMobil did not show that there is a  
3 nexus to traditional maritime --

4 THE COURT: I -- I understand that's the  
5 alternative argument.

6 MS. KUTAK: Yes. And I wouldn't want  
7 additional briefing to become an opportunity for a  
8 second bite at the apple to --

9 THE COURT: I -- I hear you.

10 MS. KUTAK: Thank you.

11 THE COURT: Okay. So let's have the  
12 nonprofits side come on up.

13 So on the question of *Young* abstention and  
14 *Colorado River*.

15 MS. SESTITO: Yes. So Your Honor, they're not  
16 really seeking abstention. Like what they want is to go  
17 back to the forum where they originally filed the case  
18 in state court.

19 THE COURT: Right.

20 MS. SESTITO: They don't want the case to be  
21 paused. They don't want it to be stayed. They don't  
22 want it to be dismissed. And there's no authority they  
23 could find that would allow them to use either of these  
24 abstention doctrines to end run our right to remove this  
25 case. And there's no dispute --

1 THE COURT: If that's true, let's say -- you  
2 know, the scenario would be --

3 MS. SESTITO: Uh-huh.

4 THE COURT: -- as I understand it, if I have  
5 the chronology right, the state of California case was  
6 pending in state court when the nonprofits came into  
7 state court. And if, in fact, the state of California  
8 case is remanded to state court -- remanded to state  
9 court --

10 MS. SESTITO: Uh-huh.

11 THE COURT: I think the other -- other factors  
12 that it's -- this is not a criminal case. But it's  
13 got -- it's a civil case with some criminal analog. And  
14 I think -- I mean, we can argue whether or not the  
15 *Younger* factors are met. But if the *Younger* factors are  
16 met, there would -- there would be a basis to remand it  
17 under the *Younger* doctrine.

18 MS. SESTITO: Well, I actually think the  
19 parties are wrong in this case. So *Younger* -- like the  
20 *Younger* case itself involved a state criminal defendant.  
21 So he's been prosecuted for a crime. He had -- he  
22 believed the statute he was being prosecuted for was  
23 unconstitutional. Instead of raising those federal  
24 defenses in the criminal prosecution, he filed a  
25 separate federal case. So he was the state court

1 defendant and a federal court plaintiff. And the Court  
2 said that that was not allowed. He was seeking to  
3 enjoin the state case in filing his federal case.

4 ExxonMobil is not seeking to enjoin anything.  
5 We're just removing, as we're permitted to do under the  
6 statute. We didn't initiate either of these cases.  
7 This isn't an attack in any way on it. We're just  
8 trying into the federal forum that the US Code provides  
9 for us in a case like this.

10 And if you look at the cases, they say that --  
11 they refer to this party issue and specifically say  
12 *Younger* abstention ordinarily does not apply when the  
13 federal plaintiff is also the plaintiff in state court.  
14 That's 255 F.3d at 1098, Ninth Circuit en banc from  
15 2001. So if we're talking about the flavor, right, a  
16 flavor is a state court defendant --

17 THE COURT: I -- I don't agree with you. I --  
18 I don't think that's -- *Younger* factors are not the  
19 positioning of who's the plaintiff, who's the defendant  
20 that you seem to suggest *Younger* says. *Younger* and  
21 the -- the factors that you apply in *Younger* are the  
22 nature of the case factors. They may have -- federal  
23 courts may have stated when a case involves parallel  
24 pending state criminal proceedings, or state civil  
25 proceedings that are akin to criminal prosecutions,



1 which I think arguably is true here, or state civil  
2 proceedings that indicate a state's interest in  
3 enforcing the orders and the judgments of its courts.  
4 That's *Younger* abstention. Those are the factors of  
5 *Younger* abstention. It's not the positioning of who's  
6 plaintiff and who's defendant in which forum.

7 MS. SESTITO: But it's also that the federal  
8 court actually has to seek to enjoin or have the  
9 practical effect of enjoining beyond going to state  
10 proceedings. And that's -- that's -- that's where --

11 THE COURT: Well, it has to implicate a  
12 state's interest in enforcing orders and judgments of  
13 its courts.

14 MS. SESTITO: Well, I think the courts are  
15 saying it in different -- there's several of the courts,  
16 including *Green* and *Herrera*, that address it as needing  
17 to either actually enjoin, be an actual suit to bring an  
18 injunction to stop the federal court proceeding,  
19 declaratory relief, or in some other way interfere.  
20 There has to be interference with the state court  
21 action.

22 And in all of these cases, that was the --  
23 that was the intent. That was the purpose of doing it.  
24 In *Herrera*, that's --

25 THE COURT: Would that be the case here if --

1 if the state case goes forward in state court and then  
2 the nonprofit case was here, then what is the risk of  
3 conflicting judgments and interference with the state  
4 court proceedings?

5 MS. SESTITO: But that's inherent in any case  
6 where there are similar issues being decided in federal  
7 court and state court. And the Supreme Court has  
8 rejected that.

9 And I'll cite from the *Roden* decision, a Ninth  
10 Circuit, 2007 case, 495 F.3d at 1151. The Supreme Court  
11 has rejected the notion that federal court should  
12 abstain whenever a suit involves claims or issues  
13 simultaneously being mandated in state court merely  
14 because whichever court rules first move via the  
15 doctrines of res judicata and collateral estoppel  
16 preclude the other from deciding that claim or issue.  
17 So that is just not enough under *Younger*, Your Honor.

18 We don't have the critical interference, the  
19 ingenuity, the practical effect of enjoining the ongoing  
20 state court proceedings. And in this case, it's  
21 particularly inappropriate to apply it. Because  
22 ExxonMobil isn't trying to enjoin a state's lawsuit.

23 We -- we got served -- they filed the lawsuits  
24 on the same day. Actually, the Sierra Club case was  
25 filed first in state court, not second. But they were

1 filed the same day. And ExxonMobil is just seeking to  
2 defend itself. And it has a right to remove. The court  
3 has a virtually unflagging obligation to hear cases that  
4 are proper in federal court, as this one is. And if you  
5 allow the nonprofits to --

6 THE COURT: Let me ask you this question.  
7 Let's just be practical for a moment.

8 MS. SESTITO: Uh-huh.

9 THE COURT: Does it make a lot of sense for --  
10 as I -- as I understand it, effectively, the nonprofit  
11 claims, they're not as -- as extensive, I guess, as the  
12 state court claims -- the state case claims, but  
13 they're -- they're -- they overlap almost entirely. I  
14 don't think the nonprofit -- they have, I think -- they  
15 have both nuisance claims -- and I forget the other  
16 claim for relief. But does it make sense to have the  
17 state court -- and this is -- again, assumes that I'm --  
18 I bought the idea that this -- the state case goes back  
19 to the -- to the Superior Court. Does it make sense for  
20 this case to stay here and that case to stay there? And  
21 we go about our merry way in a case like this?  
22 Shouldn't this be one place?

23 You might want it to be in federal court, is  
24 your answer to that. But assuming it can't be in  
25 federal court and the state case, doesn't it just make

1 sense for it to be all in one place?

2 MS. SESTITO: I don't think the court can  
3 remand it just because it makes --

4 THE COURT: No. I'm just asking a question.  
5 Does it -- don't you think there are problems associated  
6 with having these parallel proceedings in a case of this  
7 type?

8 MS. SESTITO: I think there are many, many  
9 cases that are pending right now in this court, either  
10 are similar or parallel to state --

11 THE COURT: I'm assuming that that's probably  
12 not an optimal situation.

13 MS. SESTITO: Right. But it happens all the  
14 time. And that -- that can't be sufficient to send  
15 cases that have proper federal court jurisdiction, that  
16 were properly removed, that have diversity  
17 jurisdiction -- there's a reason why Congress provided  
18 removal jurisdiction for diverse parties. And the Court  
19 can't just walk away from that and decide that it would  
20 be more efficient or -- or -- or more -- that the issue  
21 should be decided together. Because what that would --  
22 I -- there have been a substantial number of cases in  
23 this court that might no longer be pending here, if the  
24 court had the ability to just --

25 THE COURT: Okay. All right.

1 MS. SESTITO: But do just want to say one  
2 thing, Your Honor, which is that they permitted us to go  
3 forward -- remanding the Sierra Club case, would  
4 essentially allow them to end run around these  
5 jurisdictional laws and end run around federal court  
6 jurisdiction and our right, frankly, to have this case  
7 removed and heard in a federal forum.

8 And the fact that they, you know, talked to  
9 the California Attorney General and, you know, filed  
10 their lawsuits on the same day, they can't be the ones  
11 that divest a federal court of jurisdiction based on  
12 this kind -- that kind of gamesmanship. And there's no  
13 case -- we don't find a single case that would allow  
14 their actions in that way to divest a defendant of their  
15 right to have their case heard in federal court.

16 THE COURT: Okay. Ms. Park, go ahead.

17 MS. PARK: I think it would be helpful just to  
18 walk through the *Younger* factors and to then talk about  
19 removing. With respect to the *Younger* factors, there is  
20 a threshold question. And that threshold question was,  
21 Is this the type of case where *Younger* abstention would  
22 apply? And those are what we (indiscernible) for  
23 criminal cases, quasi criminal action tables, with  
24 respect to judicial enforcement. This is a quasi  
25 criminal action *Huffman Pursue*, 420 U.S. 582, Citizens

1 for Free -- Free Press, 933 F.3d 655, Cabrera versus  
2 City of (indiscernible) --

3 THE COURT REPORTER: Your Honor, this is the  
4 court -- this --

5 MS. PARK: -- (indiscernible) this is  
6 precise -- nuisance is precisely quasi criminal  
7 enforcement action. So is the (indiscernible).

8 THE COURT REPORTER: Excuse me --

9 [Court reporter's microphone is not projecting  
10 into the open courtroom.]

11 THE COURT: If I find *Younger* abstention is  
12 applicable, the answer is to remand?

13 MS. PARK: The answer, yes, is to remand.

14 THE COURT: You have some cases for me where  
15 having found *Younger* applicable, the -- the remedy is to  
16 do remand to state court as opposed to stay or dismiss?

17 MS. PARK: Yes. So in *Quackenbush v.*  
18 *Allstate*, the Court held -- the Supreme Court held that  
19 federal courts have the power to dismiss or remand to  
20 the extent plaintiff's claims are equitable.

21 THE COURT: Under *Younger*?

22 MS. PARK: Under *Younger* -- or under  
23 abstention doctrines in general. And *Gilbertson versus*  
24 *Albright* confirmed that. Because while *Quackenbush* was  
25 a *Burford* abstention -- I don't know if I'm saying it

1 right -- but under *Gilbertson versus Albright*, that was  
2 similar, another case.

3 The other thing is that -- the other case I'd  
4 like to refer you to is *Trudy Christiansen versus*  
5 *McVeigh*. The pin cite on that is 2013 Westlaw 5835562.  
6 And in this case, the Central District of California  
7 said that the court is not categorically barred for  
8 remanding damages action in Colorado River and has cited  
9 *Quackenbush* for saying that to the extent that there's  
10 money damages, maybe the better course of action is to  
11 stay. But in R and R Sweat [phonetic], Ninth Circuit  
12 case, that case was dismissed even though it was a money  
13 damages action.

14 THE COURT: Just -- just so I address it, I  
15 know state law makers *Colorado River* doctrine  
16 alternative argument. But as far as I can find, there  
17 is no case that is remanded under the *Colorado River*  
18 doctrine.

19 MS. PARK: There is. It's (indiscernible)  
20 versus City of Oakland, 2007 Westlaw 6272. And this is  
21 a Northern District of California --

22 THE COURT: So is there any circuit authority  
23 that says you can remand using Colorado River doctrine?

24 MS. PARK: There is no circuit authority, but  
25 in this case, the Court did remand a 1983 claim which is

1 a constitutional claim based with the component.

2 THE COURT: Colorado River?

3 MS. PARK: Correct.

4 THE COURT: But that's it.

5 MS. PARK: But -- but fundamentally here, it  
6 is -- the nonprofits are asserting a public nuisance  
7 claim under nuisance abatement in that they  
8 (indiscernible). So it does fall squarely within  
9 *Quackenbush* in the sense that it is seeking equitable  
10 relief. (indiscernible). And I think -- I also what's  
11 important to know is that with respect to Gilbertson and  
12 Albright, they did determine to stay their action given  
13 that there was (indiscernible) understanding that the  
14 state court did not have the ability to provide damages  
15 under the (indiscernible) considering the constitutional  
16 issue. Here (indiscernible) possibly exist are the  
17 damages under public nuisance which is a state court  
18 claim that the state can alert. And so I think that is  
19 a distinction.

20 THE COURT: What's -- what's your response to  
21 your counterpart's argument that, you know, your case  
22 plainly -- you had jurisdiction over your case because  
23 you've got diversity in CAFA. Well, they argue it's  
24 tantamount to a class action, and we don't have to get  
25 into all that right now.



1 MS. PARK: Uh-huh.

2 THE COURT: But under diversity, there's  
3 jurisdiction. So why shouldn't the tail cases just  
4 proceed along. Why -- why should we say -- do something  
5 which you say it's not -- it's not unprecedented, but  
6 it's certainly not a very prevalent way to proceed. To  
7 say, oh, *Younger* abstention, I'm remanding -- or  
8 Colorado River. Why shouldn't we just have cases go  
9 forward? Because, as counsel says, there are certainly  
10 a lot of circumstances in which we've got issues being  
11 litigated in the state court the same time they're being  
12 litigated in the federal court. Why not?

13 MS. PARK: The *Younger* -- the *Younger*  
14 abstention factors do apply here. And I -- I wanted  
15 much --

16 THE COURT: Well, what I'm saying is -- well,  
17 let's say is the answer to -- let's -- let's assume for  
18 a moment that I agree with you.

19 MS. PARK: Uh-huh.

20 THE COURT: That doesn't automatically mean I  
21 remand. I can do any number of things if I find *Younger*  
22 applies, one of which, we better stay the case, or  
23 possibly dismiss the case. Why shouldn't I take one of  
24 those options?

25 MS. PARK: Because fundamentally *Younger* is

1 about quality and federalism. And ExxonMobil is clear  
2 that they're just (indiscernible) by asserting a First  
3 Amendment claim for relief, which they said that they  
4 weren't going to do in -- in opposition. Federal  
5 (indiscernible), the federal contractor (indiscernible)  
6 squarely claims for relief that they're seeking by  
7 initiating removal into federal court, assumed the  
8 federal claims for relief to enjoin the state court  
9 action, which is the state court (indiscernible). And  
10 the authority for that is, with respect to the first  
11 amendment charge, *Gilbertson v. Albright*, 381 F.3d 965.

12 THE COURT REPORTER: I apologize. Excuse me.

13 MS. PARK: And with respect --

14 THE COURT REPORTER: This is --

15 [Court reporter's microphone is not projecting  
16 into the open courtroom.]

17 MS. PARK: -- to the --

18 THE COURT: Ma'am, I'm not sure that you're  
19 answering -- now you're talking about comity, the cite  
20 for California case seems to encompass your case, which  
21 seems a bit (indiscernible) -- let's assume that the  
22 aspect of your case is not effectively covered by the  
23 State of California case. So how does it offend the  
24 state court -- comity in the state court if we send back  
25 the California state court case -- State of California

1 case to the state court and then stay this one? Why  
2 not?

3 I mean, I understand you want (indiscernible)  
4 to nonprofits and you want your case to proceed. But in  
5 terms of the comity issue, it doesn't create any  
6 problem. Respecting the state court, the state court's  
7 going forward.

8 MS. PARK: Uh-huh.

9 THE COURT: Why not?

10 MS. PARK: Again, I believe that Plaintiff, as  
11 for the complaint, they initiated the case in state  
12 court.

13 ExxonMobil moved on the diversity, but the rule does  
14 apply. And the actions that they are seeking, the  
15 federal claims for relief that they are seeking from a  
16 federal court is the very type of things that -- that  
17 (indiscernible).

18 And I -- I don't -- I think I do understand  
19 what you say. And again, I think *Gilbertson v. Albright*  
20 says -- says why you some remand it to state court,  
21 which is when there is federal claims for relief -- or  
22 federal relief being sought, in order to enjoin state  
23 cause -- state court -- state causes of action, it  
24 should be the state court that should assess whether or  
25 not that their laws are being are -- are -- are within

1 the bounds of the Constitution protection.

2 THE COURT: But that's right about the State  
3 of California's case, but it's not true about your case,  
4 particularly. You're not -- you're -- you're here  
5 because there's diversity jurisdiction. You're not  
6 invoking federal claims to defeat the prospect of having  
7 this go forward in state court with respect to your  
8 case.

9 MS. PARK: And -- and I think this is why  
10 the -- where the discussion about having a federal  
11 plaintiff can't be a state court plaintiff, I think  
12 that's kind of where that applies here, is that the --  
13 the question, again, is whether there is -- whether the  
14 case offends comity or federalism. And if the state  
15 court plaintiff sees that that state court case isn't  
16 going along and then sees as a state -- as a federal  
17 plaintiff, this is what (indiscernible) defendant cited  
18 teaches, and that is 650 -- my apologies. That is 76  
19 F.App. 790.

20 Again, the interests are not about who's the  
21 party in a state court action and this is a federal  
22 action; it's why is that case being initiated in federal  
23 court. ExxonMobil initiated this case in federal court  
24 by removal to assert federal claims for the First  
25 Amendment, federal (indiscernible) -- to have the

1 federal court make determinations on those on this  
2 case -- make a determination on this -- on these -- on  
3 these claims for relief to enjoin state case -- claims  
4 (indiscernible) violations.

5 THE COURT: Okay.

6 MS. SESTITO: May I respond?

7 THE COURT: Yes. So let me be really clear.  
8 ExxonMobil did not initiate a case. ExxonMobil removed  
9 a case that was filed that was removable under ordinary  
10 diversity principles. And I think that counsel's  
11 argument makes clear that this isn't about comity at all  
12 with them. This is about forum shopping. They want to  
13 be in the state court.

14 And with due respect, we didn't create the  
15 comity problem. They created the comity problem by  
16 filing a complaint that was removable. We exercised our  
17 right to remove it, a right that's given to us by  
18 Congress. And we're not trying to evade anything. We  
19 haven't filed any motions. We're not seeking to do  
20 anything. This isn't a circumstance where -- there are  
21 cases in the *Colorado River* where a plaintiff waited for  
22 years, doesn't get a good outcome, and then assert a  
23 different proceeding in a different court on a single  
24 facts, because they're -- and that's a clear case of  
25 forum shopping. That's not what happened here. We just

1 removed the case. The cases are at their beginning.

2 And so to pretend that this is about comity, I  
3 think it's clear they don't want the case stayed. They  
4 want to go back and they want to litigate in state  
5 court. They do have to state claims, because they  
6 brought a private nuisance claim where they seek damages  
7 that are distinct from the claims that the state has  
8 brought forward. And I also want to highlight that  
9 these cases -- if the Court isn't persuaded about the  
10 state-court-defendant/federal-court-plaintiff  
11 distinction in all of the cases, the parties are the  
12 same, or they are so intertwined as to be essentially  
13 the same entities. And that is something that the  
14 nonprofit plaintiffs argue that they have that kind of  
15 relationship with the state.

16 I'm frankly not sure the state would agree  
17 with that. Because the examples in the cases, like  
18 under *Herrera*, it's a husband, wife, and their children.  
19 They are closely related. Or it's a husband and wife  
20 that own a company together, a small company. And the  
21 state court action against the husband and the company.  
22 And the federal court action is the wife, the husband,  
23 and the company. And in those cases, the court finds  
24 that -- the court has found in *Herrera*, Ninth Circuit  
25 case, that both parties are intertwined enough that

1 their interests are the same.

2 I don't believe, though, that -- that the same  
3 can be said for nonprofits, that they have the same kind  
4 of relationship as the owner of a corporation or a  
5 corporation that they own or family members. But their  
6 interests are so closely aligned that they're  
7 essentially the same party. And so this is frankly just  
8 an ordinary case.

9 Large companies get sued all the time on  
10 claims that are similar. It's extremely common to  
11 have -- in cases where there's lots and lots of actions,  
12 to have a federal MDL pending at the same time as a  
13 state-coordinated proceeding in California. It happens  
14 every day. And that's really all that this is.

15 These are two separate lawsuits that were  
16 filed by separate parties. I -- I don't believe they  
17 can meet this test of being intertwined. And I would  
18 ask the court to look at *Herrera* that describes those  
19 kinds of relationships, or two related corporations.

20 I don't believe that Sierra Club and the  
21 Attorney General are family members. I don't believe  
22 they commonly own a corporation. I don't believe that  
23 they're related corporations. And presumably, they  
24 filed separate lawsuits precisely because they have  
25 separate interests. And so this is just an ordinary

1 removal that should proceed in state court pursuant to  
2 this court's obligation to hear the case.

3 THE COURT: So just to bring it finally to its  
4 conclusion, I know you wouldn't, you know, agree with me  
5 if my decision is that the State of California case goes  
6 back to state court. But were that to occur, your  
7 position is, okay, we'll just roll ahead in the two  
8 forums.

9 MS. SESTITO: Absolutely. Happens every day,  
10 all the time. Yep.

11 THE COURT: Okay.

12 MS. PARK: The nonprofits are asserting claim  
13 which are, if not private general attorney actions, like  
14 a private attorney general action, and would alongside  
15 the attorney general. And --

16 THE COURT: You would agree that you're not --  
17 you're not -- as a going forward matter, you're so tied  
18 to the attorney -- there are times when you're adverse  
19 to the attorney general, I presume.

20 MS. PARK: I don't think we've progressed far  
21 enough to know.

22 THE COURT: Well, there will be a day where  
23 perhaps you will, but okay.

24 But counsel suggests -- and I'll go back and  
25 look at it -- but the -- the nature of the inner



1 relationship has to be different than two parties that  
2 happen to have one moment in time in alignment with  
3 respect to certain claims going forward, that that's not  
4 enough.

5 MS. PARK: Uh-huh. But the -- the  
6 California -- the California's Attorney General Office  
7 is suing on behalf of the State of California.

8 THE COURT: Right.

9 MS. PARK: And there is nonprofits that can be  
10 found in paragraphs 20, 211, 212, and 337 of the  
11 complaint. So fundamentally, the fundamentally real  
12 parties of interest in both actions are the People of  
13 the State of California. And they're asserting the same  
14 claims for the same underlying conduct. I can't see how  
15 they're not intertwined in this instance.

16 THE COURT: Okay. I want to go back and look  
17 at some things. I may -- I may or may not ask for some  
18 additional input from the parties, but I'll go back and  
19 take a look and give you a --

20 MS. SESTITO: Now, if you want very quick  
21 point on that one housekeeping issue. So first, just on  
22 that last point, the -- the state attorney general files  
23 lawsuits all the time. And it can't be that the subject  
24 matter of any suit brought by the state attorney general  
25 any other case that raises similar claims or similar

1 issues on behalf of private plaintiffs, the People in  
2 the State of California can't proceed in federal court  
3 just because the state attorney general has chosen to  
4 sue in state court on a similar topic. But that can't  
5 be the rule because the -- the federal courts would be  
6 very, very empty if that was the case.

7           The housekeeping issue, Your Honor, the -- the  
8 state's attorneys and I had a conversation yesterday to  
9 talk about kind of the next step forward in the case,  
10 which I very much appreciate them initiating. And if --  
11 if -- however the case proceeds, we want to have an  
12 opportunity to meet and confer. And so if the cases --  
13 if the motions to remand are denied, then, of course,  
14 the cases will stay here. We will meet and confer about  
15 next steps.

16           If -- if Your Honor, I hope you will choose to  
17 deny the motions to remand. But if -- if you grant  
18 them, one or both, we would ask for a short  
19 administrative stay to allow the plaintiffs to meet and  
20 confer about next steps, to allow ExxonMobil the ability  
21 to evaluate potential appellate options and potentially  
22 seek a -- a more formal stay.

23           And that's something that the state has agreed  
24 makes sense to -- through just their remand, not the  
25 order itself, but the actual physical remand of the file

1 to state court -- for a 30-day period to allow the  
2 parties to meet and confer about the next steps in the  
3 case. And I -- I submit -- I haven't had a chance to  
4 talk to counsel for the nonprofits, but I would submit  
5 that it would make sense as well in that circumstance.

6 THE COURT: So if my decision was that I want  
7 to remand one or both, I -- you -- I -- you have not  
8 confronted this to say, "All right, I'm going to remand  
9 but it's not -- the remand isn't going to be triggered  
10 for some period of time"?

11 MS. SESTITO: That's right. So if the  
12 administrative stay of just the remand --

13 THE COURT: Do you have some revise for me  
14 procedurally where that would have occurred?

15 MS. SESTITO: Yes. I mean, it has occurred  
16 before in this court in other litigation before. Judge  
17 Chhabria had stayed a remand.

18 THE COURT: That's --

19 MS. SESTITO: And -- and it's just staying the  
20 actual mailing of the file to --

21 THE COURT: I understand.

22 MS. SESTITO: -- state court so that the  
23 parties have an opportunity to either -- both of these  
24 issues are appealable, and so we want to review those  
25 options and then confer with --

1 THE COURT: Understand. Okay. And you  
2 haven't had an opportunity --

3 MS. PARK: I have not had an opportunity to  
4 look into this.

5 THE COURT: Okay. Okay. Thank you.

6 MS. PARK: Thank you.

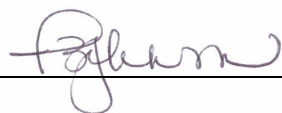
7 MS. SESTITO: Thank you, Your Honor.

8 (Proceeding concludes at 3:22 p.m.)

9 \*\*\*\*\*

10 **C E R T I F I C A T E**

11 I certify that the foregoing is a correct  
12 transcript from the record of proceedings in the  
13 above-entitled matter.

14  
15  
16 

17 Teresa B. Johnson, CVR-M-CM, RVR, RVR-M

02/27/2025

Date